APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DECIDED JULY 14, 2008

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 07-2696

GILBERT R. ARREOLA,

Plaintiff-Appellant,

v.

MOHAMMED CHOUDRY, M.D.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 03 C 2854—**Matthew F. Kennelly**, *Judge*

ARGUED JANUARY 25, 2008—DECIDED JULY 14, 2008

Before BAUER, WOOD and EVANS, *Circuit Judges.*

BAUER, *Circuit Judge.*

Gilbert Arreola brought this action under 42 U.S.C. § 1983, alleging that prison doctor Mohammed Choudry's treatment of his injured ankle constituted a

deliberate indifference to a medical need in violation of the Eighth Amendment. Following a two-day trial, a jury found in favor of Dr. Choudry. Arreola moved for a new trial, arguing that conversations between his lawyer and various jury members after the verdict revealed that the foreperson was biased. The district court denied the motion. Arreola challenges the refusal to grant a new trial, arguing that his due process rights were violated and the court misapplied the standard for evaluating juror bias set forth in *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 556, 104 S.Ct. 845, 78 L.Ed.2d 663 (1984).[1] For the following reasons, we affirm.

I. BACKGROUND

In 2003, Arreola, a prisoner at Hill Correctional Center, injured his ankle during a soccer match and was taken to the prison infirmary for treatment. Dr. Choudry examined him and found no bone tenderness. Based on Arreola's symptoms, Dr. Choudry diagnosed him with a sprained ankle, ordered him back to his cell, and scheduled a follow-up visit in seven to ten days. Days later, Arreola was transferred to Cook County Jail, where another doctor took an x-ray of his ankle and determined that Arreola had a broken ankle. Arreola brought this suit, alleging that Dr. Choudry failed to conduct a proper examination of his ankle to determine the nature of the injury. The central issue at trial was whether

1. Arreola has filed a separate, unrelated interlocutory appeal challenging the Crutch Policy of Cook County Department of Corrections, No. 07-1700, which is currently pending before this court.

Dr. Choudry's treatment of Arreola's ankle constituted deliberate indifference to Arreola's serious medical needs.

The jury *voir dire* process began with each prospective juror's completion of a written questionnaire. Question 19 asked: "Have you or any family member ever had a broken or severely sprained ankle, foot, or leg?" Juror Laterza, who was later elected foreperson, answered "no." Fourteen prospective jurors answered this question affirmatively, and Judge Kennelly conducted a series of follow-up questions to clarify the extent of the injuries and whether there had been any problems with the medical treatment.

Arreola challenged two jurors for cause, based on their personal experiences with ankle sprains suffered by family members. Judge Kennelly questioned them further by asking whether they would be able to put aside those experiences; both replied they could and Arreola withdrew his challenge to these jurors. Judge Kennelly seated twelve jurors, six of whom had answered affirmatively to the question involving ankle injuries.

The jury returned a verdict in favor of Dr. Choudry; later Judge Kennelly permitted both parties to speak to the jurors. Arreola's counsel filed a Motion for New Trial, supported by her own affidavit recounting her conversations with the jurors. The affidavit stated that Juror Laterza, who answered "no" to Question 19, told Arreola's counsel that she had once suffered a bad

ankle sprain, and that based on this experience, she had no problem believing that Dr. Choudry could press on Arreola's ankle without finding tenderness. Counsel also stated that information she obtained from another juror during the post-trial interview indicated that the jury had given weight to Laterza's experience during deliberations.

Judge Kennelly made further inquiry and arranged for Laterza to be available by telephone. He requested that both parties submit questions to ask Laterza. Arreola's questions included: Did you see a doctor regarding your ankle sprain? Did you compare the actions taken by your doctor regarding your ankle sprain with the actions taken by Dr. Choudry regarding Arreola's ankle injury? Did you discuss this comparison with the other jurors? Did you disclose your sprained ankle on your Juror Questionnaire form, and if not, why? Judge Kennelly rejected these questions, particularly those involving juror deliberations, commenting that the conversation would "be done in a way that does not do anything that in the least bit will deter any person from wanting to serve on a jury."

Judge Kennelly placed the call to Laterza with both parties' counsel and a court reporter present. He began the conversation by asking Laterza whether she had told Arreola's counsel after trial that she had suffered a sprained ankle, and Laterza responded, "You know what? I did." The following discussion then took place:

Judge: Was it a sprain that you regard as a severe sprain?

Laterza: It hurt to walk. Oh, my gosh, yes, I did.

Judge: So when you answered "no" on that particular question—In other words, the question didn't say whether you had a sprained ankle. It said: Have you had a severely sprained ankle? Would you have regarded it as a severe sprain?

Laterza: Well, I still went on vacation. I mean, it was—I mean, I still worked and I still went on—I had plans. I went on a cruise, and I went on the vacation. I mean, I did the tours and everything.

Judge: How long after the sprain did you do that?

Laterza: Oh, immediately. It was like—I think I had to work the next day and then I was leaving that Saturday.

Judge: So you didn't miss any work, in other words?

Laterza: No.

Judge: And then you went right on vacation within a day or two after?

Laterza: Right.

Judge: I mean, if I were to ask you today, have you ever had a—the wording is important here-have you ever had a severely sprained ankle, how would you answer that; yes or no?

Laterza: Okay, but what degree now are you talking severe?

Judge: Actually that is a really darned good question, and I guess the answer is—

Laterza: It hurt.

Judge: It would be a question of whether you regarded it as severe. So did you have—would you regard the sprained ankle you had as a severe sprain?

Laterza: No.

Judge: Okay. And when you answered the question on the questionnaire "no," were you trying to conceal or hide anything or anything like that?

Laterza: No. You know what? I forgot about it.

Judge: All right. But even now, you would not regard this-because of the way it was, you would not have regarded it as a severe sprain; is that a fair characterization?

Laterza: Well, severe being that, okay, it hurt—

Judge: Yes.

Laterza: —but I still functioned.

Judge: Okay. So, in other words, if I were to ask you right now, do you regard that as having been a sprain that you would characterize as a severe sprain, would you say it was

Laterza: I would have to say no because I was able to walk.

Judge Kennelly ended the conversation, and subsequently denied the motion for new trial in a written order, concluding that, under *McDonough*, Laterza was not dishonest because (1) she had not recalled the injury at the time she filled out the questionnaire, and (2) Arreola failed to even prove that Laterza's answer was incorrect because she affirmed that she would not have regarded it as a severe sprain that would have called for an affirmative answer on the questionnaire.

II. ANALYSIS

We review a decision to deny a motion for a new trial based on juror bias for an abuse of discretion. *Artis v. Hitachi Zosen Clearing Inc.*, 967 F.2d 1132, 1141 (7th Cir.1992). "[T]here are 'compelling institutional considerations militating' in favor of appellate deference to the trial judge's evaluation of the significance of possible juror bias." *United States v. Medina*, 430 F.3d 869, 875 (7th Cir.2005) (citation omitted); *United States v. Sanders*, 962 F.2d 660, 673 (7th Cir.1992) ("The trial judge will always be in a better position than the

appellate judges to assess the probable reactions of jurors in a case over which he has presided.") (citation omitted). The Fifth and Sixth Amendments guarantee due process of law and trial by an impartial jury. *United States v. Brodnicki*, 516 F.3d 570, 574 (7th Cir.2008). Trial courts have wide discretion in deciding a motion for a new trial. *United States v. McClinton*, 135 F.3d 1178, 1186 (7th Cir.1998).

Arreola first contends that he must be retried because the "truncated" juror bias hearing in Judge Kennelly's chambers violated his procedural due process rights. Arreola argues that as soon as Judge Kennelly determined that a hearing was necessary, he was entitled to a meaningful hearing. Specifically, he argues that Laterza was not sworn in, he did not have an opportunity to cross-examine Laterza or call witnesses, and thus, the proceeding failed to provide him with a meaningful opportunity to be heard.

Due process does not require a new trial every time jurors have been placed in a potentially compromising situation. *Rushen v. Spain*, 464 U.S. 114, 118, 104 S.Ct. 453, 78 L.Ed.2d 267 (1983); *McClinton*, 135 F.3d at 1186. "[D]ue process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen." *Oswald v. Bertrand*, 374 F.3d 475, 478 (7th Cir.2004) (quoting *Smith v. Phillips*, 455 U.S. 209, 217, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982)). The nature of the hearing, in which all

interested parties are permitted to participate, to some extent should include a determination by the trial judge of the circumstances, the impact of those circumstances on the jury, and whether or not the result of those circumstances prejudiced the verdict. *Smith*, 455 U.S. at 215, 102 S.Ct. 940, 71 L.Ed.2d 78.

Arreola's claims seek to expand present due process protections in situations involving post-verdict allegations of pre-existing juror bias. This Circuit has held that while due process may require some sort of hearing to determine whether extraneous contacts may have affected a jury's ability to be fair, the standard applies only to prejudicial extraneous contacts, and *not* to preexisting juror bias. *McClinton*, 135 F.3d at 1186 (emphasis added); *Artis*, 967 F.2d at 1141. In the due process context, the tool for examining an intrinsic influence like juror bias is *voir dire*. *McClinton*, 135 F.3d at 1186. Other circuits have drawn similar distinctions. *See United States v. Connolly*, 341 F.3d 16, 34-35 (1st Cir.2003) (holding that a juror's notes are an intrinsic influence on a jury's verdict, thus an evidentiary hearing is not required); *United States v. Sotelo*, 97 F.3d 782, 796 (5th Cir.1996) (holding that trial courts are afforded broader discretion in dealing with intrinsic influences due to jury misconduct than it has afforded in cases of extrinsic influences); *United States v. Bassler*, 651 F.2d 600, 602 (8th Cir.1981) (holding that a distinction may be drawn between extrinsic influences, such as publicity, consideration of matters not admitted into evidence, communications between a juror and an outside person, and intrinsic influences, such as a juror's notes,

discussions or intimidation among jurors) (citing *United States v. Winters*, 434 F.Supp. 1181, 1186 (N.D.Ind.1977), *aff'd* 582 F.2d 1152 (7th Cir.), *cert. denied*, 439 U.S. 936, 99 S.Ct. 333, 58 L.Ed.2d 332 (1978)).

Laterza's prior experience with an ankle injury constitutes an intrinsic influence that does not require an evidentiary hearing, let alone a new trial. *See Marquez v. City of Albuquerque*, 399 F.3d 1216, 1223 (10th Cir.2005) ("[A] juror's personal experience does not constitute extraneous prejudicial information."); *Peterson v. Wilson*, 141 F.3d 573, 577-78 (5th Cir.1998) (holding that juror discussion of personal past experience is not "extrinsic" evidence that requires a new trial). Moreover, jurors are expected to bring commonly known facts and their experiences to bear in arriving at their verdict. "We cannot expunge from jury deliberations the subjective opinions of jurors, their attitudinal expositions, or their philosophies. These involve the very human elements that constitute one of the strengths of our jury system." *Shillcutt v. Gagnon*, 827 F.2d 1155, 1159 (7th Cir.1987) (internal quotations omitted). Although jurors may not go beyond the record to develop their own evidence, they are entitled to evaluate the evidence presented at trial in light of their own experience. *United States v. O'Brien*, 14 F.3d 703, 708 (1st Cir.1994) ("[I]n gauging witness credibility and choosing from among competing inferences, jurors are entitled to take full advantage of their collective experience and common sense.").

We find Judge Kennelly conducted a post-verdict *voir dire* to investigate pre-existing juror bias that satisfied due process. He made the inquiry into the allegation of bias in a direct and conscientious manner, keeping in mind that the integrity of jury proceedings must not be jeopardized by unauthorized invasions. *Remmer v. United States*, 347 U.S. 227, 229, 74 S.Ct. 450, 98 L.Ed. 654 (1954); *United States v. Vitale*, 459 F.3d 190, 197 (2d Cir.2006) (instructing that district courts should be reluctant "to haul jurors in after they have reached a verdict in order to probe for potential instances of bias, misconduct or extraneous influences."). Any further inquiry into Laterza's (or any other juror's) thought processes throughout jury deliberations would have violated Fed.R.Evid. 606(b),[2] which severely restricts post-trial inquiry into a verdict. *Tanner v. United States*, 483 U.S. 107, 117, 107 S.Ct. 2739, 97 L.Ed.2d 90 (1987); *United States v. Briggs*, 291 F.3d 958,

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2. Federal Rule of Evidence 606(b) states: "Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jury's attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying."

963-64 (7th Cir.2002) (holding that post-verdict allegations of juror intimidation during the deliberative process were not extraneous prejudicial information or an outside influence, thus under Rule 606(b) neither a hearing nor a new trial was warranted); *United States v. Muthana*, 60 F.3d 1217, 1223 (7th Cir.1995) ("Juror testimony regarding the jury's deliberations is not admissible to impeach the verdict unless an extraneous influence was alleged to have affected the jury.").

Judge Kennelly properly treated the allegation as an "internal matter," thus keeping the integrity of the jury's deliberations intact. The post-trial interview, in which he determined that Laterza was honest and forthright about her response to Question 19, did not provide him with any reason to conduct further inquiry into the matter. *See United States v. Calbas*, 821 F.2d 887, 896 (2d Cir.1987) (holding that the trial court "wisely refrained from allowing the inquiry to become an adversarial evidentiary hearing, so as to minimize intrusion on the jury's deliberations."). Judge Kennelly was under no obligation to ask the specific questions posed by Arreola during the post-verdict *voir dire* for potential bias, particularly when those questions (as Judge Kennelly noted) would violate Rule 606(b). *See id.* at 897 (holding that counsel's more active participation in the post-verdict *voir dire* was not necessary; it was enough that the court permitted counsel to submit proposed questions in advance); *see also United States v. Meader*, 118 F.3d 876, 878-81 (1st Cir.1997) (holding that the court has no obligation to ask counsel's specific questions while conducting a post-verdict *voir dire* of a juror for potential bias).

Arreola also argues that he is entitled to a new trial because Laterza did not give an honest answer on the *voir dire* questionnaire, contending that Laterza heard other jurors relate previous ankle injuries during *voir dire,* but remained silent as to her injury. He also believes that Judge Kennelly misapplied the *McDonough* test because a correct response by Laterza to Question 19 would have provided a valid basis for a challenge for cause under *McDonough.* In order to obtain a new trial on this basis, a party must show "that a juror failed to answer honestly a material question on *voir dire,*" and, if successful, then must demonstrate that "a correct response would have provided a valid basis for a challenge for cause." *Medina,* 430 F.3d at 875 (citing *McDonough,* 464 U.S. at 556, 104 S.Ct. 845, 78 L.Ed.2d 663). We review the district court's conclusion that Arreola failed to show that Laterza's answer to the *voir dire* question was not honest for an abuse of discretion. *United States v. Reed,* 875 F.2d 107, 113 (7th Cir.1989).

Throughout the pre-trial *voir dire,* other jurors related incidents in the past in which they or a family member injured an ankle. Presumably Laterza heard their answers, but this does not make her a dishonest person. Question 19, as it is worded, is partially subjective, in that it requires the juror to decide whether a previous ankle injury was a "severe" sprain, or simply a slight injury.[3] One woman's severe ankle

3. Judge Kennelly seemed to agree as to the subjective nature of a "severe" injury, noting during the post-trial *voir dire* that Laterza's inquiry about the degree of severity was "a really darned good question."

injury could be another woman's tolerable ankle discomfort. Had she remembered her ankle injury during the pre-trial *voir dire*, Laterza still could have honestly answered "no" to Question 19 if, in her judgment, the sprain was not severe. While Laterza stated that the injury "hurt a lot," she was still able to go to work the next day and leave for vacation the following day. Judge Kennelly found that at the time she filled out the *voir dire* questionnaire, she did not recall the injury, but nonetheless affirmed that she would not have regarded it as a severe sprain that would have called for an affirmative answer to Question 19. To invalidate the result of Arreola's trial "because of a juror's mistaken, though honest, response to a question, is to insist on something closer to perfection than our judicial system can be expected to give." *McDonough*, 464 U.S. at 556, 104 S.Ct. 845, 78 L.Ed.2d 663. Judge Kennelly did not abuse his discretion in denying the motion for new trial.

Judge Kennelly declined to address the second prong of the *McDonough* test, as do we, because Laterza was not dishonest in her answers at *voir dire*. We note, however, that given there were six members of the seated jury that answered "yes" to Question 19, and Arreola withdrew his challenge for cause for two potential jurors with prior experiences with ankle injuries, after they assured the court they would be able to remain impartial, the court presumably would not have granted a challenge for cause if these facts about Laterza's injury came out during the pre-trial *voir dire*. *See Zerka v. Green*, 49 F.3d 1181, 1187 (6th Cir.1995)

(holding that, in an excessive force action, despite *voir dire* admissions by several jurors that they had relationships with police officers, plaintiff's counsel never challenged any of them for cause, thus failing to meet the second prong of the *McDonough* test).

III. CONCLUSION

Arreola was afforded due process protection that he was entitled to and received a fair trial by an impartial jury. Accordingly the district court's denial of Arreola's motion for new trial is AFFIRMED.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS DATED JUNE 18, 2007

United States District Court,
Northern District of Illinois

Name of Assigned Judge or Magistrate Judge
Matthew F. Kennelly

CASE NUMBER
03 C 2854

DATE
6/18/2007

CASE TITLE
Arreola v. Choudry

DOCKET ENTRY TEXT

For the reasons stated below, the Court denies plaintiff's motion for a new trial [docket no. 291]. The Court also directs the Clerk to place Arreola's motion (docket no. 291) under seal for the reasons described at the end of this order.

■ [For further details see text below.]

Appendix B

STATEMENT

Defendant Muhammad Choudry prevailed at trial on Gilbert Arreola's claim against him. Arreola has moved for a new trial, arguing that a juror committed misconduct. The Court denies the motion for the reasons stated below.

Arreola, who was incarcerated at Hill Correctional Center during the time at issue in the case, claimed that Choudry, a physician employed at the prison, was deliberately indifferent to Arreola's serious medical needs. Arreola suffered an ankle injury while playing soccer and was taken to the infirmary for treatment, where he was eventually seen by Choudry. Arreola claimed that Choudry did not conduct a proper examination or testing to determine the nature of the injury. Several days later, a doctor at the Cook County Jail, where Arreola had been transferred, conducted an x-ray and determined that Arreola had a broken ankle. Arreola sought damages for pain and suffering that he had experienced in the interim, as well as punitive damages.

The voir dire process began with the jurors' completion of a written questionnaire developed by the Court after receiving input from the parties. One of the questions stated as follows: "Have you or any family member ever had a broken or severely sprained ankle, foot or leg?" Several prospective jurors answered yes, and the Court orally asked each of them a series of follow up questions during the oral voir dire session in open court.

The jury returned a verdict for Choudry. After the trial, counsel asked to speak with the jurors, and the Court permitted them to do so. A few days later, Arreola moved for a new trial. His motion included an affidavit from his counsel stating that a particular juror, who had served as the foreperson, had told the lawyers during their post-trial interview that she had once suffered a bad ankle sprain. This particular juror had responded no to the questionnaire inquiry regarding whether she had ever had a broken or severely sprained ankle, foot or leg. Counsel also stated that information they had obtained during the interviews with the jurors indicated that this particular juror's treatment experience had been given significant weight during the jury's deliberations.

After the motion was fully briefed, the Court determined to make further inquiries of the juror. A session was held in chambers, with the court reporter present. Before the session, the Court directed a member of its staff to make arrangements had been made to contact the juror by telephone and to advise the juror that the Court wished to ask her some "follow up" questions, without advising her of the subject of the questions.

In response to questions by the Court, the juror advised that she had, in fact, experienced an ankle sprain in the past but that she did not regard it as a "severe" sprain that would have called for her to give an affirmative answer to the question on the juror questionnaire. She advised that though she had sought medical treatment for the injury, she had gone to work the following day

without incident, and then left on vacation (a cruise) the following day. The juror stated that at the time she filled out the questionnaire and responded to the Court's questions prior to trial, she had not recalled the injury, but she nonetheless affirmed that she would not have regarded it as a severe sprain that would have called for an affirmative answer on the questionnaire.

To obtain a new trial on the ground that a juror gave erroneous answers during voir dire, a party must demonstrate that the juror failed to answer honestly a material question, and that a response would have provided a valid basis for a challenge for cause. *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 556 (1984). Arreola's motion fails on the first part of this test, as he has failed to show that the juror's question was even incorrect as the question was worded, let alone that her answer was not honest. The Court therefore need not address the second part of the *McDonough* test.

For these reasons, the Court denies plaintiff's motion for a new trial [docket no. 291]. The Court also directs the Clerk to place Arreola's motion (docket no. 291) under seal, as Arreola improperly attached a copy of the juror's questionnaire to the motion without seeking leave of court, contrary to the Court's written commitment to the jurors - of which counsel were well aware - that the questionnaires would not be made part of the public record. The questionnaire contains personal information regarding the juror that need not and should not be made public.

APPENDIX C — TRANSCRIPT OF PROCEEDINGS DATED JUNE 14, 2007

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 03 C 2854

Chicago, Illinois
June 14, 2007
11:00 a.m.

GILBERT R. ARREOLA,

Plaintiff,

v.

MUHAMMAD CHOUDRY, M.D.,

Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
MATTHEW F. KENNELLY

(The following proceedings were had in open court:)

THE CLERK: 03 C 2854, Arreola v. Choudry.

THE COURT: I need you folks up here. Can you give your names for the record, please?

MR. SALEMI: Scott Salemi for Dr. Choudry, the defendant.

MS. CULLISON: Laura Cullison and Andrew Fuchs and Torey Chambers on behalf of plaintiff Mr. Gilbert Arreola.

THE COURT: I have made arrangements for the juror in question to be available by phone at her workplace now. We are going to go back to chambers.

We are going to spend about two or three minutes for you to give me any suggestions for questions that you wish me to ask her. I am going to be the only person asking questions. I will take those under advisement. We will get the person on the phone.

We need to do this fairly quickly because she is expecting a call, and we will move ahead from there, okay. So we are going to stop right here, and we are going to go back in chambers.

It is just going to be the court reporter and as few lawyers as possible because I am going to need to tell the juror who all is on the phone, and — don't want it to be a big crowd. So make some judgments about that, okay.

(The following proceedings were had in chambers:)

THE COURT: Before we get the juror on the phone, the record should reflect that we are in chambers. I am here, the court reporter is here, Mr. Salemi and Ms. Cullison.

I had my —

Appendix C

Actually I put at a point in time when I knew that Ms. Laterza would be at work, I left — the only number we had was a home number. I left a message on her voice mail saying that I had a couple of follow-up questions for her. This would have been either Monday or Tuesday, and I asked her to call my assistant so that she could give her a number where we could reach her at 11:00 o'clock today. My assistant didn't know the purpose of the call.

Ms. Laterza apparently called yesterday and left a work number, which I have got here. So she was expecting a call about 10 minutes ago. It's about 10 after 11:00 right now.

Obviously what I intend to do — maybe it is not so obvious — I intend to ask her — I need to tell her who is here, obviously. And I intend to ask her— tell her that there has been a question raised about one of the answers on her questionnaire and that I needed to ask her some follow-up questions about that.

That's not necessarily the precise words I am going to use.

Then I will proceed to ask her some questions that essentially try to get at whether she, in fact, did have a broken or severely sprained ankle, foot or leg, which is what the question read, and whatever other information I think is necessary about that.

So does anybody have any specific questions beyond those subject matters that you want me to ask because nobody other than me in this room is going to be talking, and I am not going to take interruptions so that you can confer, think, whatever. So whatever you have got, you need to tell me now or forever hold your peace.

MS. CULLISON: We drafted questions that are probably ones that you have already considered, but we weren't certain how this would go. So I thought that would be —

THE COURT: I am not going to ask these questions in this way. You can make this part of the record at some point.

And as far as discussing with the other jurors, honestly, there is a rule of evidence that precludes admission of that. So that is definitely not going to be part of this, and this is going to be done in a way that does not — and I want to be real clear about this — this is going to be done in a way that does not do anything that in the least bit will deter any person from wanting to serve on a jury.

So I am going — I know what the subjects are because I have read the cases that have been cited. I will ask what I think is appropriate.

Have you got anything, Mr. Salemi?

MR. SALEMI: Just consistent with those cases, my two concerns are, one, if she intentionally gave a false answer.

THE COURT: We may or may not get to that. It depends on what her answers are to the earlier questions that I am going to give her.

Intentionally, and the other one is?

MR. SALEMI: The final would be whether or not her answer on the profile calls for her to be fair and impartial or her ankle injury calls for her to be unfair —

THE COURT: I am not sure I am going to get to that either, but I understand that that is potentially an issue depending on what the answer to the first question is. So we will cross that bridge when we get to it.

MR. SALEMI: Yes, sir.

(Phone dialed.)

JUROR LATERZA: Good morning. UPS. This is Laura.

THE COURT: Hi. Is this Ms. Laterza?

JUROR LATERZA: Yes, it is.

THE COURT: Hi, Ms. Laterza. This is Judge Kennelly calling. How are you doing this morning?

JUROR LATERZA: Good. How are you?

THE COURT: I am just fine.

I apologize for not calling when I said I was going to. And I also apologize for calling you at all, and I don't really want to trouble you or anything, but let me just tell you why I am calling.

JUROR LATERZA: Okay.

THE COURT: Following the trial and when there was the discussions that some of the jurors had with the lawyers out in the courtroom, a question got raised regarding a particular answer on your questionnaire that you had filled out at the beginning of the trial, and I just need to ask you a couple of follow-up questions about that, and don't be concerned about it at all. I just want to make sure that I have the correct information. The other information I got was all secondhand. So that is why we are sort of going directly to the source here.

And the reason I have got you on a speaker phone is that the lawyer for the plaintiff, Ms. Cullison, and the lawyer for the defendant, Mr. Salemi, are here, and so is my court reporter.

So let me just — the answer on the — the question on the questionnaire that you and the other jurors filled out before the trial said — the question stated the following. This is what it said:

Appendix C

Have you or any family member ever had a broken or severely sprained ankle, foot or leg? And you answered no.

JUROR LATERZA: Right.

THE COURT: And the reason why a question had come up is that one of the lawyers advised that in the discussions that you all had in the courtroom after the trial that you had indicated that you had had a sprained ankle at some point in time, and I guess my first question —

JUROR LATERZA: You know what? I did.

THE COURT: Yes, and my first question is: Was it a sprain that you regard as a severe sprain?

JUROR LATERZA: It hurt to walk. Oh, my gosh, yes, I did.

THE COURT: So when you answered "no" on that particular question —

In other words, the question didn't say whether you had a sprained ankle. It said: Have you had a severely sprained ankle?

Would you have regarded it as a severe sprain?

JUROR LATERZA: Well, I still went on vacation. I mean, it was — I mean, I still worked and I still went on — I had plans. I went on a cruise, and I went on the vacation. I mean, I did the tours and everything.

THE COURT: How long after the sprain did you do that?

JUROR LATERZA: Oh, immediately. It was like — I think I had to work the next day and then I was leaving that Saturday,

THE COURT: So you didn't miss any work, in other words?

JUROR LATERZA: No.

THE COURT: And then you went right on vacation within a day or two after?

JUROR LATERZA: Right.

THE COURT: I mean, if I were to ask you today, have you ever had a — the wording is important here — have you ever had a severely sprained ankle, how would you answer that; yes or no?

JUROR LATERZA: Okay, but what degree now are you talking severe?

THE COURT: Actually that is a really darned good question, and I guess the answer is —

JUROR LATERZA: It hurt.

THE COURT: It would be a question of whether you regarded it as severe. So did you have — would you regard the sprained ankle you had as a severe sprain'?

JUROR LATERZA: No.

THE COURT: Okay. And when you answered the question on the questionnaire "no," were you trying to conceal or hide anything or anything like that?

JUROR LATERZA: No. You know what? I forgot about it.

THE COURT: All right. But even now, you would not regard this — because of the way it was, you would not have regarded it as a severe sprain; is that a fair characterization?

JUROR LATERZA: Well, severe being that, okay, it hurt —

THE COURT: Yes.

JUROR LATERZA: — but — still functioned.

THE COURT: Okay. So, in other words, if I were to ask you right now, do you regard that as having been a sprain that you would characterize as a severe sprain, would you say it was severe or it wasn't severe?

JUROR LATERZA: I would have to say no because I was able to walk.

THE COURT: Okay. That is all 1 have got for you, Ms. Laterza. I am very, very sorry for bothering you.

JUROR LATERZA: I am so sorry for —

THE COURT: No, you have nothing to be concerned about, and I really appreciate your service on the jury, and thank you so much, and I am sorry to take time out of your work.

JUROR LATERZA: No problem.

THE COURT: Thanks a lot.

JUROR LATERZA: Thanks. Bye-bye.

THE COURT: Good-bye.

The motion for a new trial is denied. I will write some sort of an order that describes the reasons for that, but that is the ruling on the motion. Okay.

MR. SALEMI: Thanks.

MS. CULLISON: Thank you, your Honor.

(Which were all the proceedings had in the above entitled cause on the day and date aforesaid.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

Laura M. Brennan
Official Court Reporter
Northern District of Illinois

Date